

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application for Approval
of the Merger of Northern States Power
Company and New Century Energies, Inc

ISSUE DATE: May 26, 2005

DOCKET NO. E,G-002/PA-99-1031

ORDER DIRECTING DISBURSEMENT OF
2003 SERVICE QUALITY PENALTY

PROCEDURAL HISTORY

On July 28, 1999 Northern States Power Company (NSP) filed a petition for approval of a merger between itself and New Century Energies, Inc. (NCE). The matter was assigned to Docket No. E,G-002/PA-99-1031.

On June 12, 2000, the Commission issued an Order approving the merger as modified by six clarifications and conditions and three associated Stipulation Agreements. One of the associated Stipulation Agreements was between NSP and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG). This stipulation is hereafter referred to as the OAG Stipulation. Among other things, the OAG Stipulation addressed service quality issues.

On February 28, 2005, NSP d/b/a Xcel Energy (Xcel) filed a petition seeking guidance from the Commission on where \$100,000 penalty monies owing pursuant to Section IV of the OAG Stipulation should be directed.

On May 3, 2005, the RUD-OAG filed its comments. The RUD-OAG recommended that the Commission direct Xcel to distribute the \$100,000 to the 7,519 customers of Xcel who sustained six interruptions of five minutes or more in 2003.

The Commission met on May 11, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

This Order decides whether NSP will be required to disburse its 2003 service quality penalty (\$100,000) to the general fund or in some other manner.

I. OAG Stipulation Providing Penalty

Section IV of the OAG Stipulation addresses service quality issues.¹ First, the parties agreed to extend a metering and billing Service Quality Plan under which NSP was then operating. In addition, the stipulation modified the Company's Service Quality Plan to provide additional standards and remedies. The additional standards were: 1) a System Average Interruption Frequency Index (SAIFI) value of 1.0 and 2) a value of 1.9 hours for the System Average Interruption Duration Index (SAIDI).

Section IV of the OAG Stipulation also provided remedies for under-performance, including 1) an annual credit of \$30.00 to customers that experienced six interruptions of five minutes or more and 2) a penalty of \$100,000 for exceeding either the SAIFI or SAIDI performance indices by 105 percent. The Stipulation did not specify how the penalty was to be disbursed.

II. Xcel's Position and Request

In its February 28, 2005 filing, Xcel acknowledged that the Company had a SAIFI of 1.07 in 2003, exceeding the SAIFI standard by 1.05 percent and therefore incurring the \$100,000 penalty. Xcel recalled that on March 1, 2004 it notified the Commission, the Department, and the RUD-OAG of this fact and requested guidance on disbursement of the penalty amount and noted that the Minnesota Legislature had subsequently adopted Minn. Stat. § 16A.151(1)(c).

The Company noted that the underlying statute (Minn. Stat. § 16A.151) provided a general rule regarding the disposition of money recovered by the State, directing that such money be deposited in the general fund but stated that the 2004 amendment to that statute (Minn. Stat. § 16A.151, (2)(a)) created an exception that might apply in this case.

Xcel stated that under terms of the amendment, if the Commission determined that the \$100,000 penalty was being recovered "on behalf of specific injured persons," the money could be distributed directly to them. Otherwise, the Company stated, the payment should be directed to the general fund. The Company requested an Order directing the appropriate disposition of the 2003 SAIFI penalty.

III. RUD-OAG's Position and Recommendation

The RUD-OAG agreed with Xcel that Minn. Stat. § 16A.151 governs disposition of money recovered by the State and, in this case, the \$100,000 penalty. As to the application of the 2004 amendment to that statute, Minn. Stat. § 16A.151, (2)(a), the RUD-OAG stated that it agreed with Xcel that the amendment authorizes directing the penalty to the group of Xcel customers defined in Paragraph IV.B.3 of the Merger Settlement (the OAG Stipulation). In sum, the RUD-OAG argued that directing the SAIFI penalty amount to the customers would be consistent with Minn. Stat. § 16A.151, the public interest, and with the Merger Settlement's service standards.

¹ See page 7 of the OAG Stipulation provided as Attachment A to Xcel's February 28, 2005 petition.

IV. Commission Analysis and Action

Minn. Stat. § 16A.151, subd. 1(c) states the general rule regarding disposition of penalties such as Xcel's penalty for exceeding the SAIFI standard established in the Merger Settlement.

Money recovered by a state official . . . in settlement of a matter that could have resulted in litigation is state money and must be deposited in the general fund.
(Emphasis added.)

However, the state legislature has adopted an exception to that general rule:

Subd. 2. **Exceptions.** (a) If a state official litigates or settles a matter on behalf of specific injured persons or entities, this section does not prohibit distribution of money to the specific injured persons or entities on whose behalf the litigation or settlement efforts were initiated. If money recovered on behalf of injured persons or entities cannot reasonably be distributed to those persons or entities because they cannot readily be located or identified or because the cost of distributing the money would outweigh the benefit to the persons or entities, the money must be paid into the general fund.
(Emphasis added.)

The Commission finds that disbursing the penalty amount (\$100,000) to identified Xcel customers is authorized by the language of Subdivision 2(a). This language creates an exception to the general rule that penalty money must be paid into the general fund. The Merger Agreement was approved because, among other things, it contained assurances that the merged company's customers would receive service at a particular standard and that the merged company would incur financial consequences for failure to meet those standards.

It is clear that the Settlement's service quality provisions (standards and penalties) were adopted for the benefit of the Company's ratepayers. As the OAG Stipulation stated:

The Parties [NSP and the RUD-OAG], therefore, offer the following Stipulation and Agreement, which recommends Commission approval of the merger with specific conditions which modify NSP's proposal to ensure ratepayers the opportunity to share in the merger's expected benefits while protecting ratepayers from the merger's potential risks.²

In addition, from among all Xcel customers, a logical subset of customers to receive a pro rata share of the penalty money can be readily located and identified. These are the customers who have experienced repeated and sustained service interruptions: six interruptions of five minutes or more, excluding storm damage and public damage, as described in Section IV, B, 3 of the OAG Stipulation. In fact, Xcel has already identified those customers, all 7,519 of them.

² The OAG Stipulation at page 2.

In these circumstances, the Commission finds it appropriate that Xcel disburse its penalty amount (\$100,000) to the 7,519 customers described in Section IV, B, 3 of the OAG Stipulation, i.e. customers who have experienced repeated and sustained service interruptions: six interruptions of five minutes or more, excluding storm damage and public damage.

ORDER

1. NSP shall direct the penalty money to the 7,519 customers that experienced six interruptions of five minutes or more in 2003, i.e., the customers identified in Section IV.B.(3) of the OAG Stipulation.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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